

**FINDINGS AND RECOMMENDED RENTAL RATE**  
**FOR**  
**AGRICULTURAL AND GRAZING LEASE NO. 2098.**

**A report to the State Board of Land Commissioners by**  
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**May 3, 2007**

On April 30, 2007, the Department recently held a Competitive Bid Hearing for State of Montana Agricultural and Grazing Lease No. 2098, which is being renewed in 2007. These lease was previously issued for a five-year term. This five-year lease will expire on February 28, 2012. If a Lessee wishes to renew the lease for another term he must submit an application. If other persons inquire about the availability of a lease, their names and addresses are noted in the file and they are sent applications and bid forms at the time of lease renewal.

The statutory absolute preference right within Section 77-6-205(2), MCA, to renew a State agricultural and grazing lease was declared unconstitutional by Judge Jeffrey Sherlock in Broadbent v. State of Montana, et al., First Mont. Judic. Distr. Ct., Cause No. BDV-2003-361, because it impermissibly interfered with the constitutional power of the Land Board, under Art. X, Section 4 of the Montana Constitution, to choose its lessees. The Land Board, in response to Judge Sherlock's ruling, amended ARM 36.25.117 to exercise its constitutional prerogative to grant a qualified preference right to incumbent lessees in good standing. Through this rule, the Land Board has expressed its qualified preference to issue renewals of agricultural and grazing leases to the incumbent lessee provided that they do not have a history of lease violations or committed illegal subleasing. However, in all instances, the Board has reserved the right to choose the best-qualified lessee.

As part of its constitutional power, the Land Board may also determine the rate at which such leases will be issued. The Land Board has recognized that full market value encompasses the concept of sustained yield. Section 77-6-101 MCA. In Jerke v. State Dept. of Lands, 182 Mont. 294, at 296-297, 597 P.2d 49 at 50-51 (1979), the Montana Supreme Court held that a Grazing District which was not a lessee of a state grazing lease could not exercise a preference right. The Court described the rationale of the preference right to meet a high bid as follows:

Sustained yield is the policy which favors the long term productivity of the land over the short term return of income. State ex rel. Thompson v. Babcock, supra. The preference right seeks to further this policy by inducing the State's lessees to follow good agricultural practices and make improvements on the land. This is accomplished by guaranteeing that the lessees will not lose the benefits of their endeavors by being outbid when their leases terminate. They are preferred and may renew their leases by meeting the highest bid submitted.

Id.

Exercised in such a manner, such a preference is in the best financial interests of the school trust beneficiaries. All other things being equal, the Land Board has recognized that stability of land tenure encourages existing lessees to make greater improvements in the land, knowing that they will likely be able to utilize these improvements in the future, and that stability of tenure allows lessees to operate more efficiently. The duty to maximize revenue return to the trust estate from the trust properties is always subject to the duty to preserve the financial productivity of the trust lands. Oklahoma Education Association v. Nigh, 642 P.2d 230 at 238 (1982)

No Applicant for a grazing lease can compel the State Board of Land Commissioners to grant it an interest in state trust lands, especially where the concept of sustained yield is ignored. See, Skillman v. Department of State Lands, 188 Mont. 383, 613 P.2d 1389 (1980); Gibson v. Stewart, 50 Mont. 404, 147 P. 276 (1915)(Whether a tract of state land shall be leased is a

question addressed to the sole discretion of the Land Board.); §77-6-206, MCA ([T]he board may withdraw any agricultural or grazing land from further leasing for such period as the board determines to be in the best interest of the state".)

Under ARM 36.25.117, if the Lessee exercises the qualified preference right but believes that the bid amount is excessive, he may request a hearing. The purpose of the hearing is twofold: 1) to determine the best-qualified Lessee for the upcoming lease term; and 2) to ascertain the appropriate rental rate for that term. Specifically, the Director inquires whether the high bid amount represents the fair market value of the lease and whether the rental rate is truly in the best interests of the trust. In determining whether the "high bid" rental rate is in the best interests of the beneficiaries of the trust, the Land Board must utilize the criteria set out in §77-6-205(2), MCA, and in Thompson v. Babcock, 147 Mont. 46, 409 P.2d 808 (1966). Under these criteria, the Montana Supreme Court has held that the "high bid" may be rejected where it is either "...above community standards for a lease of such land, would cause damage to the tract, or impair its long-term productivity".

The Montana Supreme Court has recognized that an excessive rental rate, at some point, economically compels a Lessee to graze all the available forage on a grazing lease or reduce costly fertilizer, herbicide, and summer fallow treatments on agricultural leases. When state lands are over-grazed or farmed with minimal input costs, they produce more noxious weeds, less forage or crops, and less future income for the beneficiaries of the various trust lands. In extreme cases, the productivity of the land may be permanently damaged. It is in the best interests of the State to set a rental rate which balances the competing factors. In this "balancing act", the Land Board is attempting to maximize long-term income by allowing the Lessee a sufficient monetary incentive to exercise wise range management and agricultural practices. If the rate is too low, the State will not receive full market value for its lands. If the rate is too high, the Lessee will be induced to over-graze the tract, or reduce inputs such as herbicides, and long-term trust income will inevitably suffer.

In the competitive bid hearing process, the Director is recommending the rental rate for the next term of the grazing or agricultural lease. The economic viability of these leases fluctuates according to prevailing weather conditions and commodity prices; both of which can vary wildly. Despite these fluctuations, the grazing rental charged by the Board must be paid by the Lessee whether or not any forage upon the lease is utilized. By contrast, private lessors generally do not collect rentals when they no longer have forage available for lease. Consequently, setting an appropriate rental rate, so as to sustain the long-term viability of "school trust" leases and maximize long-term income, is simply not as easy as accepting the highest bid. If it were, there would be no need for a hearing on the subject.

The best lessee is chosen according to nine criteria set out within ARM 36.25.117:

- 1) an intended grazing or cropland management plan for the new term of the lease;
- 2) experience associated with the classified use of the land;
- 3) other non-state lands that are fenced and managed in common with the state land;
- 4) intended grazing or cropland improvements that will benefit the health and productivity of the state lands;
- 5) a weed management plan;
- 6) management goals and objectives and monitoring procedures to determine if they are being met;
- 7) the method or route used to access the state land;

- 8) any other information the director deems necessary in order to provide a recommendation to the board; and,
- 9) the incorporation of all or part of this information as terms and conditions in the new lease agreement.

The current policy of the Board authorizes the Director of the Department to hold the competitive bid hearings; hear the evidence; and make recommendations to the board. Since the rental rates must be based upon the evidence presented at the hearing, the Board members must avoid consideration of information outside the hearing record.

This year the Director granted one request for hearing. Due to a scheduling conflict the Director was unable to attend the hearing, and delegated responsibility for conducting the hearing to Tom Schultz, the Trust Lands Management Division Administrator. This hearing was conducted on April 30, 2007 at the offices of the Department in Helena, Montana. The hearing was electronically recorded and all witnesses testified under oath. However, the hearings were conducted in an informal manner. Present at the hearings were: Trust Lands Management Division Administrator, Tom Schultz, Agriculture and Grazing Management Bureau Chief, Kevin Chappell; Trust Lands Attorney, Tommy Butler, and Anaconda Unit Manager, Fred Staedler.

In preparation for this hearing, both the Lessee and the High Bidder were notified of the time and place of the hearing and given copies of ARM 36.25.117. The High Bidder, appeared and presented testimony to explain the underlying facts and rationale for the High Bid.

When appropriate to the hearing, the Commissioner accepted in the evidentiary record, the following evidence:

#### GRAZING

1. The Department's County Competitive Grazing Lease Bid Summary for Silver Bow County for 2006.
2. The Montana Agricultural Statistics Service Report of Grazing Fee Rates for private leases in Montana reporting an average rate of \$16.10/AUM.

The testimony and evidence considered during the hearing; a summary of the hearing; and the findings and conclusions recommended are set out as follows:

## 2007 COMPETITIVE BID HEARING

Hearing Time: Monday, April 30, 2007 at 9:00 a.m.

Lease No.: 2098

Lessee: Manya "Blackie" & Marie Uzlic

County: Silver Bow

Grazing Acres: 40          AUM Rating: 13

Ag Acres: 0

High Bidder: Courtland & Carol Barney

High Bid: \$45.37/AUM

Other Bids: \$8.87/AUM

Previous Rental: \$11.20/AUM

Prevalent Community Rental Information:

State Land County Bid Averages: \$9.48/AUM

MT Ag Statistics 2006 Private Lease Rate: \$16.10/AUM

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**Findings:** Mr. Manya "Blackie" Uzlic and Mr. Jim Uzlic appeared and presented testimony on behalf of the Lessee. Mr. Courtland Barney and Mrs. Carol Barney appeared and presented testimony on behalf of the High Bidder. This 40-acre tract of grazing land is located within NW¼NE¼ of Section 36, Township 2 North, Range 8 West, in Silver Bow County, Montana. This tract has not been grazed for several years. It is largely composed of granitic soils and possesses no source of stockwater. The Herman Gulch Road runs through the southern portion of this tract, bisecting it. The Lessee utilizes a 3.0-acre portion of this lease south of the road for cutting hay. The Lessee has not grazed the portion of the lease to the north of the Herman Gulch Road for several years, but continues to diligently spray for noxious weeds on that portion of the lease. The portion of the lease to the north of the road is fenced on three sides, but is un-fenced on its eastern boundary.

The Field Evaluation Report, dated September 26, 2006 shows the utilization of forage upon this grazing lease to be slight: at less than 20% of available forage. The Lessee has done some grass seeding on this tract to reduce erosion and improve its productivity, but re-establishing vegetation is understandably difficult, as granitic soils do not maintain high soil moisture. The Lessee is obtaining a laboratory analysis of these soils, so as to better select grass species for reclaiming this lease. The Lessee utilizes this Lease in conjunction with his private lands.

Mr. Uzlic applies herbicide via four-wheeler and has utilized helicopter spraying of weeds in the past, and his diligence in controlling the weeds upon this Lease is documented by the steady progress in the control any noxious weeds upon this tract. This is commendable, because noxious weeds are prevalent on adjoining lands. Mr. Uzlic would continue this weed management practice if allowed to continue with this lease. Although there has been little or no livestock use on this tract in the past, this tract still experiences a high degree of grazing by about 100 Elk. Yet, the Lessee still intends to manage this tract in the future much as in the same manner as he has in the past.

Mr. Manya Uzlic, who is in his 90's, has held this state lease for close to 70 years. Consequently, he has considerable experience in managing livestock and grazing pastures. Jim Uzlic reported a range of local grazing rates: \$8.00/AUM; \$7.50/AUM; \$7.01/AUM; \$8.64/AUM; \$5.20/AUM; \$5.00/AUM; and \$1.35/AUM, but didn't testify as to how those lands compared to the lease under consideration, making difficult any meaningful application of this data.

The High Bidders, Courtland and Carol Barney, own land to the east of this Lease, but they presently possess no livestock. Mr. Barney stated that he would likely not graze this tract, but he believed that he could provide better weed management. Mr. Barney is not a licensed weed applicator. He has prior experience as a grazing lessee since he grazed livestock on the Mount Haggin Wildlife Refuge. He stated that the fences need to be maintained upon this tract. Mr. Barney cited some grazing rates around Dillon, Montana, but could not offer any testimony as to the prevailing grazing rates in the direct proximity of this lease. The High Bidders offered no details on any proposed grazing or weed management plan. They would access this tract from their private lands to the east.

No evidence was provided in the hearing to show that the High Bid of \$45.37/AUM was either economically or biologically viable for this tract of State land, while adhering to good range management practices.

**Recommendation:**

The Division Administrator recommends that the Board issue the next five-year term of Lease No. 2098 to Many and Marie Uzlic at the rate of \$16.10/AUM.

Mr. Uzlic is the best-qualified Lessee as evidenced by his past management of this tract, and his continuing efforts to control weeds and re-establish grazing forage upon this lease. Given that there are weeds present upon adjacent lands, it will be useful to have an experienced herbicide applicator as a Lessee of this tract.

Despite the challenges and limitations posed by the soils and weeds upon these lands, and the lack of stockwater, this is still a desirable tract of grazing land. This tract has greater productive potential than meets the eye, since it regularly supports a large number of elk. While the rate of \$16.10/AUM is not directly reflected in DNRC's County Competitive Bid Rate for Silver Bow County, \$16.10/AUM is the prevailing community standard for this lease because Mr. Uzlic has successfully operated this tract at \$11.20/AUM, and the best evidence of the grazing value of this tract is the state-wide Montana Agricultural Statistics rate for 2006 of \$16.10/AUM.